

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LYNNE FREEMAN,

Case No.: 1:22-cv-02435-LLS-SN

Lynne,

v.

TRACY DEEBS-ELKENANEY P/K/A
TRACY WOLFF, et al.,

Defendants.

**DECLARATION OF EMILY SYLVAN KIM
IN SUPPORT OF DAUBERT MOTION**

I, Emily Sylvan Kim, declare as follows:

1. I am an individual defendant in this case and also the President of Prospect Agency LLC, another named defendant. I make this declaration in support of Defendants' Daubert Motion to Exclude Plaintiff's Liability Experts and Opposition to Plaintiff's Daubert Motion. The following is based on my personal knowledge and experience, and if called upon, I could testify competently to same.

2. I understand that Plaintiff's expert Christine Witthohn claims that Prospect Agency's revenue from "romance writers" from was "declining" between 2010 and 2019 (Witthohn Rep. ¶ 20), based on a review of deals posted on Publishers Marketplace (*id.* at 15). Her conclusion is flatly untrue, as our revenues were not declining during that period.

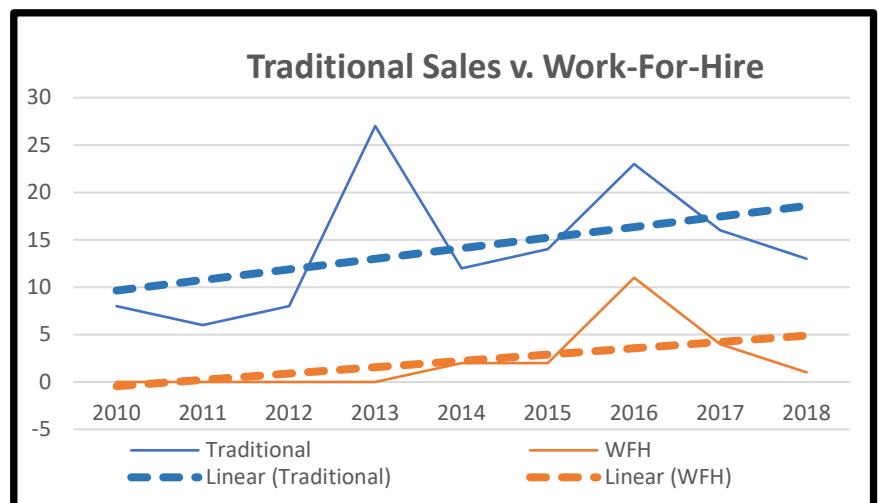
3. Ms. Witthohn bases that conclusion on exceedingly faulty information. As any literary agent knows, not all agents post all deals on Publishers Marketplace, for a host of reasons. I understand Ms. Witthohn acknowledged this at her deposition.

4. In our case, we certainly did not post all of Prospect Agency's deals on Publishers Marketplace from 2010 to 2019, including at least one major deal (over \$500,000). We also routinely did not post foreign deals or audio deals, some of which were "very nice" deals.

5. Relevant here, we did not routinely post all of the deals made for Tracy Wolff. For instance, we did not post the deals for her novels *Ruined: An Ethan Frost Novel* (Loveswept 2014), *Soulbound* (NAL 2013), *Secret Life of a Dream Girl* (Entangled 2016), *Phantom Wheel* (Little Brown Books for Young Readers, 2018), or the books in the Crave series. Wolff's titles are all listed on her publicly available website, which Ms. Witthohn could have easily reviewed.

6. Finally, even the faulty data she provides (Witthohn Rep. ¶ 15) is actually consistent with my statement above that during the years leading up to the Crave deal in 2019, there was no decline in traditional deals at Prospect:

Year	Traditional	WFH
2010	8	0
2011	6	0
2012	8	0
2013	27	0
2014	12	2
2015	14	2
2016	23	11
2017	16	4
2018	13	1



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

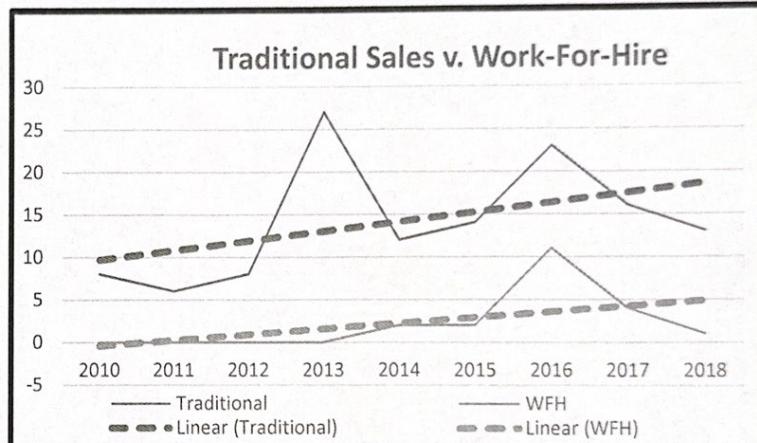
Dated: February ___, 2024

Emily Sylvan Kim

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Dated: February 7, 2024



Emily Sylvan Kim